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Attorney for Defendant  
BAY AREA RAPID TRANSIT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO BRANCH

JOSEPH JAMES GREER,

Case No. 15-cv-02307-WHO

Plaintiff,

v.

**DEFENDANT BART'S ANSWER  
TO COMPLAINT – JURY TRIAL  
DEMANDED**

CITY OF HAYWARD, BAY AREA RAPID  
TRANSIT and DOES 1-50.

Defendants.

**JURY TRIAL DEMAND**

Defendant hereby demands a jury trial in this case.

**ANSWER**

COMES NOW defendant BAY AREA RAPID TRANSIT DISTRICT and in answer to plaintiff's Complaint (excluding the third and fourth causes of action which have been dismissed), for damages responds as follows:

1. Answering paragraph 1 of the Complaint, defendant responds that it lacks sufficient information to admit the allegations in this paragraph and therefore denies them.

2. Answering paragraph 2 of the Complaint, defendant responds that it lacks sufficient information to admit the allegations in this paragraph and therefore denies them.

1           3.     Answering paragraph 3 of the Complaint, defendant admits that it is a legal entity in  
2 California.

3           4.     Answering paragraph 4 of the Complaint, defendant responds that it lacks sufficient  
4 information to admit the allegations in this paragraph and therefore denies them.

5           5.     Answering paragraph 5 of the Complaint, defendant responds that it lacks sufficient  
6 information to admit the allegations in this paragraph because there are no individually named  
7 defendants and therefore denies them.

8           6.     Answering paragraph 6 of the Complaint, defendant admits the allegations as to this  
9 defendant only.

10          7.     Answering paragraph 7 of the Complaint, defendant responds that it lacks sufficient  
11 information to admit the allegations in this paragraph and therefore denies them.

12          8.     Answering paragraph 8 of the Complaint, defendant responds that it lacks sufficient  
13 information to admit the allegations in this paragraph and therefore denies them.

14          9.     Answering paragraph 9 of the Complaint, defendant responds that it lacks sufficient  
15 information to admit the allegations in this paragraph and therefore denies them.

16          10.    Answering paragraph 10 of the Complaint, defendant responds that it lacks  
17 sufficient information to admit the allegations in this paragraph and therefore denies them.

18          11.    Answering paragraph 11 of the Complaint, defendant responds that it lacks  
19 sufficient information to admit the allegations in this paragraph and therefore denies them.

20          12.    Answering paragraph 12 of the Complaint, defendant denies the allegations in this  
21 paragraph.

22          13.    Answering paragraph 13 of the Complaint, defendant admits the allegations in the  
23 first sentence of this paragraph. Defendant denies all remaining allegations in this paragraph.

24          14.    Answering paragraph 14 of the Complaint, defendant denies the allegations in the  
25 first sentence of this paragraph. Defendant responds that it lacks sufficient information to admit  
26 the remaining allegations in this paragraph and therefore denies them.

27          15.    Answering paragraph 15 of the Complaint, defendant responds that it lacks  
28 sufficient information to admit the allegations in this paragraph and therefore denies them.

1           16.     Answering paragraph 16 of the Complaint, defendant denies the allegations in this  
2 paragraph.

3           17.     Answering paragraph 17 of the Complaint, defendant denies the allegations in this  
4 paragraph.

5           18.     Answering paragraph 18 of the Complaint, defendant denies the allegations in this  
6 paragraph.

7           19.     Answering paragraph 19 of the Complaint, defendant responds that it lacks  
8 sufficient information to admit the allegations in this paragraph and therefore denies them.

9           20.     Answering paragraph 20 of the Complaint, defendant denies the allegations in this  
10 paragraph.

11          21.     Answering paragraph 21 of the Complaint, defendant denies the allegations in this  
12 paragraph.

13          22.     Answering paragraph 22 of the Complaint, defendant responds that it lacks  
14 sufficient information to admit the allegations in this paragraph and therefore denies them.

15          23.     Answering paragraph 23 of the Complaint, defendant denies the allegations in this  
16 paragraph.

17          24.     Answering paragraph 24 of the Complaint, defendant admits officers “owed  
18 decedent a duty of due care not to place him at risk of physical injury” and denies all remaining  
19 allegations in this paragraph.

20          25.     Answering paragraph 25 of the Complaint, defendant denies the allegations in this  
21 paragraph.

22          26.     Answering paragraph 26 of the Complaint, defendant denies the allegations in this  
23 paragraph.

24          27.     Answering paragraph 27 of the Complaint, defendant denies the allegations in this  
25 paragraph.

26          28.     Answering paragraph 28 of the Complaint, defendant denies the allegations in this  
27 paragraph as to this defendant only.

1           39. Answering paragraph 39 of the Complaint, defendant denies the allegations in this  
2 paragraph.

3           40. Answering paragraph 40 of the Complaint, defendant denies the allegations in this  
4 paragraph.

5           41. Answering paragraph 41 of the Complaint, defendant denies the allegations in this  
6 paragraph as to this defendant only.

7           41. (sic) Answering paragraph 41 (sic) of the Complaint, defendant denies the allegations in  
8 this paragraph as to this defendant only.

9           42. Answering paragraph 42 of the Complaint, defendant denies the allegations in this  
10 paragraph as to this defendant only.

11           43. Answering paragraph 43 of the Complaint, defendant denies the allegations in this  
12 paragraph as to this defendant only.

13           44. Answering paragraph 44 of the Complaint, defendant denies the allegations in this  
14 paragraph as to this defendant only.

15           45. Answering paragraph 45 of the Complaint, defendant denies the allegations in this  
16 paragraph.

17           46. Answering paragraph 46 of the Complaint, defendant denies the allegations in this  
18 paragraph as to this defendant only.

19           47. Answering paragraph 47 of the Complaint, defendant denies the allegations in this  
20 paragraph as to this defendant only.

21           48. Answering paragraph 48 of the Complaint, defendant denies the allegations in this  
22 paragraph as to this defendant only.

23           49. Answering paragraph 49 of the Complaint, defendant denies the allegations in this  
24 paragraph as to this defendant only.

25           50. Answering paragraph 50 of the Complaint, defendant denies the allegations in this  
26 paragraph as to this defendant only.

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**AFFIRMATIVE DEFENSES**

**QUALIFIED IMMUNITY**

AS AND FOR A SEPARATE AFFIRMATIVE DEFENSE to the Complaint and the causes of action asserted therein, defendant alleges that the individually named defendants, as a public employees, are immune under the common law doctrine of qualified immunity.

**IMMUNITY**

AS AND FOR A FURTHER, SEPARATE AFFIRMATIVE DEFENSE to the Complaint and the causes of action asserted therein, defendant alleges that they are immune from suit for damages under 42 U.S.C. Section 1983 under the Eleventh Amendment to the Constitution of the United States.

**FAILURE TO STATE A CAUSE OF ACTION**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant alleges that plaintiff's Complaint fails to state a cause of action against said defendants.

**STATUTE OF LIMITATIONS**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant alleges that plaintiff's causes of action are barred by California Code of Civil Procedure Section 335.1 and 340(c).

**THIRD PARTY NEGLIGENCE**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant alleges that certain persons and entities not presently named in this action as plaintiffs or defendants were careless and negligent in and about the matters alleged in the Complaint and that the carelessness and negligence on the part of said persons and entities proximately contributed to the happening of the incident and to plaintiff's injuries, and to plaintiff's loss and damages complained of, if any there were.

**PLAINTIFF'S COMPARATIVE NEGLIGENCE**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant denies any wrongdoing, negligence, or liability on his part. However, should it be determined that defendant is liable, then defendant further alleges that plaintiff also contributed to

1 his own injuries and losses, if any there were, and by virtue of the decision in the case of Li v.  
2 Yellow Cab Company (1975) 13 Cal.3d 804, defendant asks that any judgment entered against it be  
3 proportionally reduced to the extent that plaintiff's own negligence proximately contributed to his  
4 own injuries, death and/or losses, if any there were.

5 **FAILURE TO MITIGATE**

6 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
7 defendant alleges that plaintiff was bound to exercise reasonable care and diligence to avoid loss  
8 and to minimize damages, if any there were, and that the plaintiff may not recover for losses which  
9 could have been prevented by reasonable efforts on his part or by expenditures that they might  
10 reasonably have made.

11 **PRIVILEGED ACTS**

12 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
13 defendant alleges that the acts set forth in the Complaint are privileged.

14 **NO VIOLATION OF CONSTITUTIONAL RIGHTS**

15 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
16 defendant alleges that plaintiff was not been deprived of any constitutional right, whether federal or  
17 state, at any time, as alleged herein.

18 **LAWFUL DETENTION**

19 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
20 defendant alleges that the plaintiff was detained as the circumstances were such to indicate to a  
21 reasonable person in a like position that such a course of action was called for in the proper  
22 discharge of the officers' duties. Plaintiff was lawfully detained incident to his lawful arrest.

23 **GOVERNMENT CODE §§820.2 and 815.2(b)**

24 AS AND FOR A FURTHER SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
25 defendant alleges that to the extent the acts complained of were within the discretion of public  
26 employees, defendant is immune from liability pursuant to the provisions of Government Code  
27 §§820.2 and 815.2(b).

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**GOVERNMENT CODE §905**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant alleges that plaintiff's action is barred to the extent that plaintiff has failed to comply with Government Code §905.

**GOVERNMENT CODE §900 ET SEQ.**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant alleges that plaintiff's Complaint exceeds the scope of his claim, both in respect to theories of liability asserted and to injuries and damages claimed. It is therefore barred pursuant to Government Code §900, et seq.

**GOOD FAITH IMMUNITY**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant alleges that at all times relevant herein, defendant acted with a good faith belief that its actions were proper and lawful and did not violate clearly established law, and consequently, defendant is entitled to immunity.

**PUNITIVE DAMAGES**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant is immune from claims for punitive damages, pursuant to California Government Code Section 818, and under federal law.

**CALIFORNIA GOVERNMENT CODE IMMUNITIES**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant alleges that it is immune from suit herein under applicable California immunity statutes, including, but not limited to, California Government Code §§ 815.2, 818, 818.2, 818.4, 818.8, 820.2, 820.4, 820.6, 820.8, 821, 821.2, 821.6, 821.8, and 822.2.

**WILLFUL CONTRIBUTORY NEGLIGENCE**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendant alleges that plaintiff was himself willfully careless and negligent in and about the matters alleged in the Complaint and that said willful carelessness and negligence on said plaintiff's own

1 part proximately contributed to the happening of the accident and to the injuries and to the loss and  
2 damages complained of, if any there were.

3 **AMOUNT OF FORCE**

4 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
5 defendant alleges that a police officer is entitled to use reasonable force and is not required to use  
6 the least amount of force necessary.

7 **USE OF FORCE**

8 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
9 defendant alleges that the force used was authorized and permitted under various sections of the  
10 Penal Code, including but not limited, §§835,835(a),836.5(b), and 843.

11 **MONELL**

12 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
13 defendant alleges proof of random acts or isolated incidents of unconstitutional action by a non-  
14 policymaking police officer are insufficient to establish the existence of a municipal policy or  
15 custom. Further, there is no *Monell* liability if there is no excessive force.

16 **RATIFICATION**

17 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
18 defendant alleges the Chief of Police's knowledge, if any, of the defendant officers' violations of  
19 plaintiff's constitutional rights does not mean that Chief of Police violated plaintiff's constitutional  
20 rights. Rather, plaintiff must prove that the Chief of Police, through his own actions, violated  
21 plaintiff's constitutional rights. Plaintiff must prove that defendant, in his capacity as the Chief of  
22 Police, undertook a course of action for the purpose of violating plaintiff's constitutional rights.

23 **TRAINING**

24 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
25 defendant alleges the alleged inadequacy of police training may serve as the basis for §1983 liability  
26 only where the failure to train amounts to deliberate indifference to the rights of persons with whom  
27 the police come into contact.

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**PRAYER**

WHEREFORE, defendant prays for relief as follows:

1. That plaintiff take nothing by this action;
2. That plaintiff's prayer for expenses, costs and attorneys fees be denied;
3. That plaintiff be required to pay defendant's reasonable attorney's fees and costs incurred in the defense of this action; and,
4. For any such relief that justice requires and this Court deems proper.

DATED: December 15, 2015

EDRINGTON, SCHIRMER & MURPHY LLP

By:                     /s/                      
Owen T. Rooney, Esq.